NOTES OF CASES.

Ship—Charter-Party—Construction—"Working Day"—Custom of Port—"Surf Day."—British & American Shipping Co. *v.* Lockett (1911) 1 K. B. 264. In this case a simple point of law was determined on a preliminary motion on the pleadings. The action was for demurrage by shipowners against assigns of a bill of lading of a cargo of lumber to be carried by the plaintiffs' ship from Vancouver to Iquique and there delivered to the charterers or their assigns on payment of freight "and all other conditions as per charter-party." The charter-party provided that "discharge was to be given with dispatch according to the custom of the port of discharge (but not less than thirty mills per working day) at such wharf, dock, or place as charterers or their agents shall designate." According to the custom at the port of Iquique vessels had to be unloaded by lighters which carry the cargo from the vessel to the beach, and the defendants set up that according to the custom of that port, days on which the surf is rough so as to prevent the operation of unloading vessels are called "surf days" and are not reckoned as working days and that taking such days into account there had been no delay—as on such days the defendants were not bound to take delivery: and that whether a day is a "surf day" is determined by the captain of the port, who makes an entry to that effect in the register of the port, and which is considered binding on all vessels being unloaded there. Hamilton, J., held, that this being proved would not be a good defence in law and that in the circumstances "surf days" were to be reckoned as "working days," but the Court of Appeal (Williams, Buckley, and Kennedy, L.JJ.) reversed his decision, being of the unanimous opinion that "surf days" were not to be reckoned as "working days," and that the alleged custom of the port to that effect was reasonable and one which was known to both parties and with reference to which they must be presumed to have contracted.* —Canada Law Journal.

Infant—Apprenticeship Deed—Covenant Not to Practice within Certain Area after Apprenticeship Ceased—Breach of Covenant—Injunction.—Gadd *v.* Thompson (1911) 1 K. B. 304 was an action to restrain the defendant from committing a breach of a covenant contained in an apprenticeship deed, whereby the defendant being then

*This is an application of the principle that a general and well-established custom or usage may constitute the common understanding of the parties to a contract, and ought to be resorted to as an interpreter of the contract. See Connolly *v.* Bruner, 48 W. Va. 71, 35 S. E. 927; Hansbrough *v.* Neal, 94 Va. 722, 27 S. E. 593. See, generally, 13 Va.-W. Va. Enc. Dig. 412, et seq., and 12 Id. 391.

J. F. M.

an infant had bound himself to the plaintiff to learn the business of an architect and had covenanted not to practice as an architect within a specified area after the termination of his apprenticeship for a certain number of years. The action was tried in the County Court, and the Judge held that the covenant was fair and reasonable and that the deed was for the benefit of the apprentice and that he was bound by the covenant. On appeal to the Divisional Court (Phillimore and Coleridge, L.JJ) it was held that though no action can be brought on a covenant in an apprenticeship deed against an infant, yet that rule only applies during the infancy of the covenantor, and that a covenant made by an infant, when fair and reasonable, may be enforced against the covenantor after he has ceased to be an infant. And it appearing that no architect in the town would accept a person as apprentice who refused to enter into a similar restrictive covenant, the covenant in question was held to be fair and reasonable and therefore enforceable by the injunction.*—Canada Law Journal.

Criminal Law—Admission by Prisoner of Another Offense—Request by Prisoner to Court to Take Other Offense into Account When Passing Sentence.—The King *v.* McLean (1911) 1 K. B. 332 was somewhat unusual in its circumstances. A prisoner was indicted and convicted for housebreaking, and he then requested the Judge in passing sentence to take into account a charge of arson for which he was to be tried in another county and to pass a sentence for both offences. The judge acceded to his request and passed a sentence of 3 years' penal servitude. This was done without consultation with the prosecutors in the other case, which was duly brought on and tried and the prisoner was convicted before another judge, and a sentence of 5 years' penal servitude was passed. On appeal the court (Lord Alverstone, C. J., and Pickford and Avory, JJ.) discussed the practice to be pursued in such a case and came to the conclusion that where a prisoner convicted admits that he is also guilty of another offense of the same character as that for which he has been convicted the court may take both offenses into account in passing sentence, but if there is a committal for the other

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*This is an example of the contracts beneficial to infants which are binding upon them. We seem to have no Virginia or West Virginia decision upon a precisely similar state of facts, but it was held in United States *v.* Blakeney, 3 Gratt. 405, 429, that infants, with the assent of their parent or guardian, may bind themselves to serve as apprentices to learn some useful trade or calling. It would seem to be a necessary corollary from this that a covenant or agreement reasonably required of an infant entering into such a contract of apprenticeship, would be enforceable against him after he becomes of age. See, generally, 7 Va.-W. Va. Enc. Dig., p. 467, et seq.

J. F. M.